

1 \_\_\_\_\_ BILL NO. \_\_\_\_\_

2 INTRODUCED BY \_\_\_\_\_  
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A SALON OWNER ENGAGES IN  
5 UNPROFESSIONAL CONDUCT IF THE SALON OWNER KNOWINGLY OR PURPOSELY ASSISTS, AIDS,  
6 ABETS, PERMITS, OR CONSPIRES WITH AN UNLICENSED PERSON TO ALLOW AN UNLICENSED PERSON  
7 TO PRACTICE COSMETOLOGY, MANICURING, OR ESTHETICS; PROVIDING THAT A LICENSED BARBER  
8 MAY NOT KNOWINGLY OR PURPOSELY USE OR EMPLOY AN UNLICENSED PERSON TO PRACTICE  
9 BARBERING; AMENDING SECTIONS 37-1-316, 37-30-412, AND 37-31-301, MCA; AND PROVIDING AN  
10 IMMEDIATE EFFECTIVE DATE."

11

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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14 **Section 1.** Section 37-1-316, MCA, is amended to read:

15 **"37-1-316. Unprofessional conduct.** The following is unprofessional conduct for a licensee or  
16 license applicant governed by this chapter:

17 (1) conviction, including conviction following a plea of nolo contendere, of a crime relating to or  
18 committed during the course of the person's practice or involving violence, use or sale of drugs, fraud,  
19 deceit, or theft, whether or not an appeal is pending;

20 (2) subject to 37-30-412 or 37-31-301(2)(a), (2)(d), or (2)(e), permitting, aiding, abetting, or  
21 conspiring with a person to violate or circumvent a law relating to licensure or certification;

22 (3) fraud, misrepresentation, deception, or concealment of a material fact in applying for or  
23 assisting in securing a license or license renewal or in taking an examination required for licensure;

24 (4) signing or issuing, in the licensee's professional capacity, a document or statement that the  
25 licensee knows or reasonably ought to know contains a false or misleading statement;

26 (5) a misleading, deceptive, false, or fraudulent advertisement or other representation in the  
27 conduct of the profession or occupation;

28 (6) offering, giving, or promising anything of value or benefit to a federal, state, or local  
29 government employee or official for the purpose of influencing the employee or official to circumvent a  
30 federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

(7) denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal, under judicial review, or has been satisfied.

(8) failure to comply with a term, condition, or limitation of a license by final order of a board;

(9) revealing confidential information obtained as the result of a professional relationship without the prior consent of the recipient of services, except as authorized or required by law;

(10) addiction to or dependency on a habit-forming drug or controlled substance as defined in Title 50, chapter 32, as a result of illegal use of the drug or controlled substance;

(11) use of a habit-forming drug or controlled substance as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally;

(12) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

(13) engaging in conduct in the course of one's practice while suffering from a contagious or infectious disease involving serious risk to public health or without taking adequate precautions, including but not limited to informed consent, protective gear, or cessation of practice;

(14) misappropriating property or funds from a client or workplace or failing to comply with a board rule regarding the accounting and distribution of a client's property or funds;

(15) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, by the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(16) subject to 37-30-412 or 37-31-301(2)(a), (2)(d), or (2)(e), assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice by use of the licensee's license;

(17) failing to report the institution of or final action on a malpractice action, including a final decision on appeal, against the licensee or of an action against the licensee by a:

(a) peer review committee;

(b) professional association; or

(c) local, state, federal, territorial, provincial, or Indian tribal government;

(18) conduct that does not meet the generally accepted standards of practice. A certified copy of a malpractice judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring during the scope and course of the practice is conclusive evidence of but is not needed to prove conduct that does not meet generally accepted standards."

**Section 2.** Section 37-30-412, MCA, is amended to read:

**"37-30-412. Barbershop owner's duty to monitor employees.** (1) An owner or manager of a barbershop licensed under this chapter shall make certain that each barber employed holds a certificate to practice barbering in this state and that employees observe the sanitary rules of the department of public health and human services and the department of commerce and shall report to the department of commerce the name of a person practicing barbering in the barbershop who has a communicable disease.

(2) A licensed barber may not knowingly or purposely employ or use an unlicensed person as a barber."

**Section 3.** Section 37-31-301, MCA, is amended to read:

**"37-31-301. Prohibited acts.** (1) Without an appropriate license issued under this chapter, it is unlawful to:

- (a) practice cosmetology for compensation;
- (b) own, manage, operate, or conduct a school of cosmetology, manicuring, or esthetics;
- (c) manage or operate a cosmetology salon, manicuring salon, esthetics salon, or booth;
- (d) teach in a school of cosmetology, manicuring, or esthetics;
- (e) practice manicuring for compensation;
- (f) practice as a finger waver; or
- (g) practice esthetics for compensation.

(2) It is unlawful:

- (a) for a person who owns, manages, or controls a cosmetology salon to knowingly or purposely employ or use an unlicensed person as a cosmetologist, a manicurist, or an esthetician;
- (b) to operate a cosmetology school without complying with all of the regulations of 37-31-311;
- (c) to practice cosmetology in any place other than in a licensed salon as provided in this chapter, except when a licensed operator is requested:

1 (i) by a customer to go to a place other than a licensed salon and is sent to the customer from a  
2 licensed salon; or

3 (ii) by a customer with a disability or by a homebound customer to go to the customer's place of  
4 residence;

5 (d) for a person who owns, manages, or controls a manicuring salon to knowingly or purposely  
6 employ or use an unlicensed person as a manicurist;

7 (e) for a person who owns, manages, or controls an esthetics salon to knowingly or purposely  
8 employ or use an unlicensed person as an esthetician;

9 (f) to operate a manicuring school or a school of esthetics without complying with 37-31-311;

10 (g) to violate any of the provisions of this chapter."  
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12 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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